

1 HOWARD F. SILBER, ESQ. (State Bar #102888)  
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4 Westlake Village, CA 91361  
5 Phone: (818) 706-8510  
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7 Attorney for Plaintiffs

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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

10 THE ESTATE OF DEREK BOOGAARD;)  
11 by its Executor ROBERT NELSON; LEN)  
12 BOOGARD an individual; JOANNE)  
13 BOOGARD an individual, )  
14 Plaintiffs, )  
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vs.

15 THE NATIONAL HOCKEY LEAGUE)  
16 PLAYERS ASSOCIATION a business form)  
17 unknown; and ROMAN STOYKEWYCH)  
18 an individual; and DOES 1 through 50,)  
19 inclusive, )  
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Defendants.

CASE NO: CV-12-09128 ODW (FFM)

EX PARTE APPLICATION FOR STAY  
OF PROCEEDINGS AND IN SUPPORT  
OF ORDER TO CONTINUE DUE DATE  
OF BRIEFS RE THE ISSUE OF  
EQUITABLE ESTOPPEL

[Filed Concurrently with Notice of Motion  
to Be Relieved as Counsel and Supporting  
Documents]

**APPLICATION**

Plaintiffs' Counsel Howard F. Silber, Esq. hereby applies ex parte for an Order, pursuant to the Federal Rules of Civil Procedure for a stay of proceedings for sixty days and for a continuance of the due date for briefs re: the issue of Equitable Estoppel with regard to the pending Motion for Summary Judgment. It is requested that the new deadline for briefs be set for thirty days after the Court's ruling on moving parties Motion to be Relieved as counsel for plaintiffs in this action which is being filed concurrently herewith. The hearing date for that

1 motion has be presently set for April 22, 2013

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4 As shown in the declaration below there has been a breakdown in the attorney client  
5 relationship and that it makes representing the clients more than “unreasonable difficult” but also  
6 “ethically impossible” for me to continue to represent the plaintiffs in this matter.

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8 As such a short continuance of the due date for briefs re the issue of equitable estoppel  
9 pending a hearing on the Motion to be Relieved as Counsel is required so that plaintiffs may  
10 employ new counsel and that counsel may further represent the plaintiffs on this issue.

11  
12 Dated: March 14, 2013

Respectfully Submitted,

13 THE LAW OFFICES OF HOWARD SILBER

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15 By:  \_\_\_\_\_

16 HOWARD F. SILBER, ESQ.

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18 **CERTIFICATE RE NOTICE OF EX PARTE APPLICATION**

19 I, HOWARD F. SILBER, declare:

- 20 1. That I am an attorney at law duly licensed to practice before this court. That I am the  
21 attorney of record for all plaintiffs herein. That if called upon to testify as to the matters  
22 herein I could and would competently testify thereto.
- 23 2. That on March 14, 2013 I notified all defense counsel that I would be submitting this ex  
24 parte application to the Court. In addition I corresponded with Mr. Seltzer, lead counsel  
25 for the defendants. That he requested certain information underlying the motion. I  
advised him of the nature of the application and also advised him that I could not give  
him specifics regarding the breakdown in communications with my client and that the  
reasons would be set forth in a declaration submitted to support the motion under seal.

1 That as of the filing of this motion he has not expressed an opposition.  
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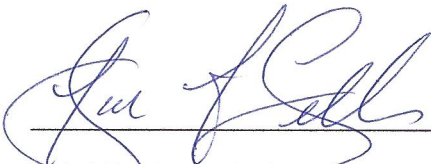
3 3. That Mr. Seltzer's contact information is as follows:

4 Richard Seltzer, Esq.  
5 Cohen, Weiss & Simon LLP  
6 330 West 42<sup>nd</sup> Street  
7 New York, N.Y. 10036

8 [rseltzer@cwsny.com](mailto:rseltzer@cwsny.com)

9 212-356-0219  
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11 Dated: March 14, 2013

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13 HOWARD F. SILBER  
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**DECLARATION OF HOWARD SILBER IN SUPPORT OF EX PARTE  
APPLICATION TO STAY THE PROCEEDINGS AND TO CONTINUE THE  
DEADLINE DATE FOR BRIEFS RE THE ISSUE OF EQUITABLE ESTOPPEL  
WITH REGARD TO THE PENDING MOTION FOR SUMMARY  
JUDGMENT UNTIL AFTER TIME FOR SERVICE OF MOTION TO BE  
RELIEVED AS COUNSEL OF RECORD FOR ALL PLAINTIFFS**

I, HOWARD F. SILBER, declare:

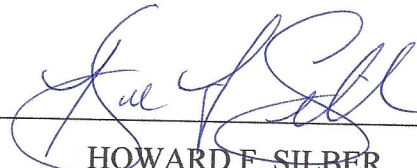
1. That I am an attorney at law duly licensed to practice before this court. That I am the attorney of record for all plaintiffs herein. That if called upon to testify as to the matters herein I could and would competently testify thereto.
2. That this is a matter wherein the plaintiffs have sued their late son's union, the NHLPA alleging a breach of the duty of fair representation for failing to file a grievance within the necessary time period under the NHL Collective Bargaining Agreement on their behalf..
3. That the defendant NHLPA has filed a Motion to Dismiss, to which plaintiff filed its Opposition; and defendants filed their Reply brief . The date of the hearing was set for February 4, 2013.
4. Thereafter the Court issued an Order that the matter would stand submitted on the briefs and that no oral argument would take place on February 4, 2013.
5. Thereafter and on March 5, 2013 the Court issued an Order that it was converting the Motion to Dismiss to a Motion for Summary Judgment and that it desired the parties to file further briefs on the issue of Equitable Estoppel only and that briefs were due on or before March 19, 2013.



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6. That as evidence in the Declaration of Howard Silber submitted under seal in support of the Motion to be Relieved as Counsel facts and circumstances have precipitously arisen that render it not only "unreasonable difficult" for my office to carry out our employment effectively, "but rather make it ethically impossible" for me to continue representing the plaintiffs in light of what has occurred. California Rules of Professional Conduct Rule 3-700(c). The Court is referred to the Memorandum of Points and Authorities submitted in support of that motion for further treatment of that issue.
7. Based upon the above I request that the court stay the proceedings and continue the date for the submission of the briefs on equitable estoppel until thirty days after the hearing on the motion to be relieved as counsel.

I declare under the penalty of perjury that the foregoing is true and correct based on personal and firsthand knowledge of the facts and if called upon as a witness, I could and would competently testify thereto.

Executed on: March 14, 2013

  
HOWARD F. SILBER

HOWARD F. SILBER, ESQ. (State Bar #102888)  
The Law Office of Howard F. Silber  
4607 Lakeview Canyon Rd. Suite 155  
Westlake Village, CA 91361  
Phone: (818) 706-8510  
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Attorney for Plaintiffs

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

THE ESTATE OF DEREK BOOGAARD;)   
by its Executor ROBERT NELSON; LEN)   
BOOGARD an individual; JOANNE)   
BOOGARD an individual, )   
Plaintiffs, )

vs. )

THE NATIONAL HOCKEY LEAGUE)   
PLAYERS ASSOCIATION a business form)   
unknown; and ROMAN STOYKEWYCH)   
an individual; and DOES 1 through 50,)   
inclusive, )

Defendants. )

CASE NO: CV-12-09128 ODW (FFM)

[PROPOSED] ORDER GRANTING EX  
PARTE APPLICATION FOR STAY OF  
PROCEEDINGS AND TO CONTINUE  
DUE DATE OF BRIEFS RE THE ISSUE  
OF EQUITABLE ESTOPPEL

The Application of Plaintiffs' Counsel Howard F. Silber, Esq. for an ex parte Order, pursuant to the Federal Rules of Civil Procedure for a Stay of Proceedings for sixty days and for a continuance of the due date for briefs re: the issue of Equitable Estoppel with regard to the pending Motion for Summary Judgment came on for consideration by the court.

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2 GOOD CAUSE appearing therefore the Application is granted. There shall be a stay in  
3 this proceeding pending the hearing of the Motion to be Relieved as Counsel presently set for  
4 April 22, 2013. The new due date for filing the briefs re the issue of equitable estoppel with  
5 regard to the pending Motion for Summary Judgment shall be May 22, 2013.

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7 IT IS SO ORDERED.

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9 Dated: \_\_\_\_\_

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11 Honorable Judge Otis D. Wright II  
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